

**Screening Partnership Program
DRAFT RFP**

FULL TEXT OF CONTRACT CLAUSES INCORPORATED BY REFERENCE

SECTION E – INSPECTION AND ACCEPTANCE

| CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|-------------|-------------|-------------------------------------|-------------|--|
| ✓ | | 3.10.4.3 | FEB 2003 | INSPECTION OF SUPPLIES - COST REIMBURSEMENT |
| ✓ | ✓ | 3.10.4.4 | FEB 2003 | INSPECTION OF SERVICES - BOTH FIXED-PRICE & COST REIMBURSEMENT |
| | | 3.10.4.5 | FEB 2003 | INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (T&M CLINS) |
| | ✓ | 3.10.4.16 | FEB 2003 | RESPONSIBILITY FOR SUPPLIES |

3.10.4-3 INSPECTION OF SUPPLIES - COST REIMBURSEMENT (FEBRUARY 2003)

(a) Definitions

(1) 'Contractor's managerial personnel,' as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

- (i) All or substantially all of the Contractor's business;
- (ii) All or substantially all of the Contractor's operation at a plant or separate location at which the contract is being performed; or
- (iii) A separate and complete major industrial operation connected with performing this contract.

(2) 'Supplies,' as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the "Warranty of Data" clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with

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contract requirements. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the "Allowable Cost and Payment" clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may--

(i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the non-conformances are due to:

(1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or

(2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

(j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.

(k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

3.10.4-4 INSPECTION OF SERVICES - BOTH FIXED-PRICE & COST REIMBURSEMENT
(FEBRUARY 2003)

(a) 'Services,' as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge if a fixed-price contract, all reasonable facilities and assistance for the safe and convenient performance of these duties.

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(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount, or if a cost reimbursement type contract, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may:

- (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and
- (2) reduce the contract price, or any fee payable under the contract, to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may:

- (1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service, (or if a cost reimbursement contract, reduce any fee payable by an amount that is equitable under the circumstances), or
- (2) terminate the contract for default.

(End of clause)

3.10.4-5 INSPECTION--TIME-AND-MATERIAL AND LABOR-HOUR (FEBRUARY 2003)

(a) Definitions.

(1) Contractor's managerial personnel,' as used in this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

- (i) All or substantially all of the Contractor's business;
- (ii) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or
- (iii) A separate and complete major industrial operation connected with the performance of this contract.

(2) 'Materials,' as used in this clause, includes data when the contract does not include the "Warranty of Data" clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government

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may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the "Payments Under Time-and-Materials and Labor-Hour Contracts" clause, but the 'hourly rate' for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) (1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may--

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to:

(1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or

(2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

3.10.4-16 RESPONSIBILITY FOR SUPPLIES (FEBRUARY 2003)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon-- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or (2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.

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(d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

END OF SECTION

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SECTION F - DELIVERIES OR PERFORMANCE

| CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|-------------|-------------|-------------------------------------|-------------|-------------------------------|
| ✓ | ✓ | 3.10.1.9 | FEB 2003 | STOP-WORK ORDER |
| ✓ | | 3.10.1.9.1 | FEB 2003 | STOP-WORK ORDER - ALTERNATE I |
| | ✓ | 3.10.1.11 | FEB 2003 | GOVERNMENT DELAY OF WORK |
| ✓ | ✓ | 3.11.34 | FEB 2003 | FOB - DESINATION |

3.10.1.9 STOP-WORK ORDER (FEB 2003)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the termination for default or the termination for convenience clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled, and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

3.10.1.9.1 STOP WORK ORDER, ALT I (FEB 2003)

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If this clause is inserted in a cost-reimbursement contract, substitute in the basic clause, Stop Work Order (TSA 3.10.1.9) listed above, subparagraph (a)(2) "termination clause" for "termination for default or termination for convenience clause" and in paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

(End of clause)

3.10.1-11 GOVERNMENT DELAY OF WORK (FEB 2003)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time specified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed:

(1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved, and

(2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)

TSA 3.11.34 F.O.B. DESTINATION (FEB 2003)

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item

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568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarded for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall--

- (1) (i) Pack and mark the shipment to comply with contract specifications; or
- (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;
- (2) Prepare and distribute commercial bills of lading;
- (3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;
- (4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;
- (5) Furnish a delivery schedule and designate the mode of delivering carrier; and
- (6) Pay and bear all charges to the specified point of delivery.

(End of clause)

END OF SECTION

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SECTION G: CONTRACT ADMINISTRATION DATA

| CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|------|------|----------------------------|----------|---|
| ✓ | ✓ | 3.10.3.1 | FEB 2003 | DEFINITIONS – GOVERNMENT PROPERTY |
| ✓ | ✓ | 3.10.3.2 | FEB 2003 | GOVERNMENT PROPERTY – BASIC CLAUSE |
| | ✓ | 3.10.3.2.1 | FEB 2003 | GOVERNMENT PROPERTY BASIC CLAUSE, ALTERNATE I |
| ✓ | | 3.10.3.2.2 | FEB 2003 | GOVERNMENT PROPERTY BASIC CLAUSE, ALTERNATE II |
| ✓ | ✓ | 3.10.3.10 | FEB 2003 | MANAGEMENT OF GOVERNMENT PROPERTY IN CONTRACTOR’S POSSESSION |
| ✓ | ✓ | 3.10.3.11 | FEB 2003 | CONTRACTOR’S MAINTENANCE PROGRAM |
| ✓ | ✓ | 3.10.3.12 | FEB 2003 | IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY |
| ✓ | ✓ | 3.10.3.13 | FEB 2003 | SEGREGATION OF GOVERNMENT PROPERTY |
| ✓ | ✓ | 3.10.3.14 | FEB 2003 | INVENTORIES |
| ✓ | ✓ | 3.10.3.15 | FEB 2003 | DISPOSITION OF GOVERNMENT PROPERTY |

TSA 3.10.3-1 DEFINITIONS – GOVERNMENT PROPERTY (FEB 2003)

(a) Accessory item - an item that facilitates or enhances the operation of plant equipment but which is not essential for its operation.

(b) Agency-peculiar property - Government-owned personal property that is peculiar to the mission of an agency (e.g., military or space property). It excludes Government material, special test equipment, special tooling, and facilities.

(c) Auxiliary item - an item without which the basic unit of plant equipment cannot operate.

(d) Common item - material that is common to the applicable Government contract and the Contractor's other work.

(e) Contractor-acquired property (CAP) - property acquired or otherwise provided by the Contractor for performing a contract and to which the Government has title.

(f) Contractor inventory -

(1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(2) Any property that the Government is obligated or has the option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

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- (g) Custodial records - written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and stock record books, used to control items issued from tool cribs, tool rooms, and stockrooms.
- (h) Discrepancies incident to shipment - all deficiencies incident to shipment of Government property to or from a Contractor's facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies include loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.
- (i) Facilities - when used in other than a facilities contract, means property used for production, maintenance, research, development, or testing. It includes plant equipment and real property. It does not include material, special test equipment, special tooling, or agency-peculiar property.
- (j) Facilities contract - a contract under which Government facilities are provided to a Contractor or subcontractor by the Government for use in connection with performing one or more related contracts for supplies or services. A "related contract" as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized. It is used occasionally to provide special tooling or special test equipment. Facilities contracts may take any of the following forms:
- (1) Facilities acquisition contract providing for the acquisition, construction, and installation of facilities.
 - (2) Facilities use contract providing for the use, maintenance, accountability, and disposition of facilities.
 - (3) A consolidated facilities contract, which is a combination of facilities acquisition and a facilities use contract.
- (k) Government-furnished property (GFP) - property in the possession of, or directly acquired by, the Government and subsequently made available to the Contractor.
- (l) Government production and research property - Government-owned facilities, Government owned special test equipment, and special Blank Sidetooling to which the Government has title or the right to acquire title.
- (m) Government property - all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both Government-furnished property and Contractor-acquired property as defined in this section.
- (n) Individual item record - a separate card, form, document or specific line(s) of computer data used to account for one item of property.
- (o) Line item - a single line entry on a reporting form that indicates a quantity of property having the same description and condition code from any one contract at any one reporting location.
- (p) Material - property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.
- (q) Nonprofit organization - any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.
- (r) Nonseverable - when related to Government production and research property, means property that cannot be

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removed after erection or installation without substantial loss of value or damage to the property or to the premises where installed.

(s) Personal property - property of any kind or interest in it, except real property, records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

(t) Plant clearance - all actions relating to the screening, redistribution, and disposal of Contractor inventory from a Contractor's plant or work site. The term 'Contractor's plant' includes a Contractor-operated Government facility.

(u) Plant clearance officer - an authorized representative of the Contracting Officer assigned responsibility for plant clearance.

(v) Plant clearance period - the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

(w) Plant equipment - personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

(x) Precious metals - uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals-platinum, palladium, iridium, osmium, rhodium, and ruthenium.

(y) Property - all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property.

(z) Property Administrator (PA) - an authorized representative of Contracting Officer assigned to administer the contract requirements and obligations relating to Government property.

(aa) Public body - any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

(bb) Real property - land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

(cc) Reportable property - Contractor inventory that must be reported for screening in accordance with this subpart before disposition as surplus, to a separate contract or to a special contract requirement governing their use or disposition.

(dd) Reporting activity - the Government activity that initiates the Standard Form 120, Report of Excess Personal Property (or when acceptable to GSA, by data processing output).

(ee) Salvage - property that because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.

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- (ff) Scrap - personal property that has no value except for its basic material content.
- (gg) Screening completion date - the date on which all screening required by this subpart is to be completed. It includes screening within the Government and the donation screening period.
- (hh) Serviceable or usable property - property that has a reasonable prospect of use or sale either in its existing form or after minor repairs or alterations.
- (ii) Special test equipment - either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.
- (jj) Special tooling - jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.
- (kk) Stock record - perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand.
- (ll) Summary Record - a separate card, form, document or specific line(s) of computer data used to account for multiple quantities of a line item of special tooling, special test equipment, or plant equipment costing less than \$5,000 per unit.
- (mm) Surplus property - Contractor inventory not required by any Federal agency.
- (nn) Surplus release date (SRD) - the date on which screening of personal property for Federal use is completed and the property is not needed for any Federal use. On that date, property becomes surplus and is eligible for donation.
- (oo) Termination inventory - any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.
- (pp) Utility distribution system - includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between the outside building or structure in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.
- (qq) Work-in-process - material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.

(End of clause)

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TSA 3.10.3.2 GOVERNMENT PROPERTY – BASIC CLAUSE (FEB 2003)

Government property is all property owned by or leased to the Government/TSA or acquired by the Government/TSA under the terms of the contract. It includes both Government-furnished property and Contractor-acquired property. Government and TSA are synonymous throughout this clause.

(a) Government-Furnished Property.

(1) The TSA should deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property (GFP) also referred to as Transportation Security Administration (TSA) Furnished Property, collectively known as Government property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the GFP.

(2) The delivery or performance dates for this contract are based upon the expectation that GFP suitable for use (except for GFP "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If GFP is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer (CO), detailing the facts, and, as directed by the CO and at TSA expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer may make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If GFP is not delivered to the Contractor by the required time, the Contracting Officer will, upon the Contractor's timely written request, make a determination regarding the delay, if any, caused to the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in Government-furnished property.

(1) The Contracting Officer (CO) may, by written notice,

(i) decrease GFP provided or to be provided under this contract, or

(ii) substitute other GFP for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract.

The Contractor shall promptly take such action directed the CO for the removal, shipment, or disposal of the GFP covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer, will make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any-

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(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property.

(1) The Government shall retain title to all GFP and Contractor-acquired property (CAP) (collectively referred to as "Government property").

(d) Use of Government property. The Government property shall be used only for performing this contract unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration.

(1) The Contractor shall be directly responsible and accountable for all Government property provided under this contract, including GFP and CAP in the possession or control of a subcontractor and should comply with associated TSA property clauses and contract requirements.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with the provisions of Transportation Security Acquisition Management System (TSAMS) Government-Property clauses in effect on the date of this contract. The provisions of the TSAMS clauses are hereby incorporated by reference and made a part of this contract.

(f) Access. The TSA and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss or damage to GFP.

(1) Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract. When the property receives the maintenance and servicing required for operations under this contract.

(2) If damage occurs to Government property, the risk of which has been assumed by the TSA under this contract, the TSA will replace the items or the Contractor shall make such repairs as the TSA directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the TSA is responsible is replaced or repaired, the Contracting Officer will make an equitable adjustment to GFP records in accordance with paragraph (h) of this clause.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting

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Officer may initiate an equitable adjustment in favor of the TSA. The right to an equitable adjustment shall be the contractor's exclusive remedy. The TSA will not be liable to suit for breach of contract for:

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of GFP in a condition not suitable for its intended use;
- (3) A decrease in or substitution of GFP; or
- (4) Failure to repair or replace GFP for which the TSA is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be determined by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the TSA. The Contractor shall prepare for shipment, deliver f.o.b. origin/f.o.b. destination, or dispose of the Government property as directed by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the TSA as directed by the Contracting Officer.

(j) Abandonment and restoration of Contractor's premises. Unless otherwise provided herein, the TSA:

- (1) May abandon any Government property in place, at which time all obligations of the TSA regarding such abandoned Government property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the GFP (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas Contracts. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

TSA 3.10.3.2.1 GOVERNMENT PROPERTY – ALTERNATE 1 (FEB 2003)

Add the following paragraphs (c) and (g)(3) to the basic Government Property clause (TSA 3.10.3.2) listed above, for fixed price contracts that include property.

(c) Title in Government property.

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(2) Fixed price contracts.

(i) Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(ii) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, which ever is earlier, whether or not title previously vested in the Government.

(iii) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(A) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(B) Title to all other material shall pass to and vest in the Government upon:

(a) Issuance of the material for use in contract performance;

(b) Commencement of processing of the material or its use in contract performance; or

(c) Reimbursement of the cost of the material by the Government, whichever occurs first.

(g) Risk of loss or damage to GFP.

(3) Fixed price. The Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor (or upon passage of title to the Government under paragraph (c) of this clause). However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(End of clause)

TSA 3.10.3.2.2 GOVERNMENT PROPERTY – ALTERNATE II (FEB 2003)

Add the following paragraphs (c) and (g)(3) – (12) to the basic Government Property clause (TSA 3.10.3.2) listed above, for cost-reimbursement, labor hour, or time and materials contracts that include property.

(c) Title in Government property.

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(2) Cost-reimbursement, labor hour, time and materials contracts.

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government:

(A) Issuance of the property for use in contract performance;

(B) Commencement of processing of the property for use in contract performance; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(iii) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor should Government property become a fixture or lose its identity as personal property by being attached to any real property.

(g) Risk of loss or damage to GFP.

(3) Cost, labor hour or time and materials contracts - limited risk of loss. The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in subparagraph (4) below.

(4) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)-

(i) That results from a risk expressly required to be insured under this contract but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

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(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by this clause.

(5) If the Contractor fails to act as provided by subdivision (g)(4)(v) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or non-acceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's personnel. In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage:

(i) Did not result from the Contractor's failure to maintain an approved program or system; or

(ii) Occurred while an approved program or system was maintained by the Contractor.

(6) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract should contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(7) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

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(iv) The insurance, if any, covering any part of or interest in such commingled property.

(8) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(8) in accordance with this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer should give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(9) The Contractor represents that it is not including in the price, and agrees it will not hereafter include in any price to the Government, any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(10) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry insurance under another provision of this contract.

(11) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse the Government, as directed by the Contracting Officer.

(12) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(End of clause)

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TSA 3.10.3.10 MANAGEMENT OF GOVERNMENT PROPERTY IN CONTRACTOR'S POSSESSION (FEB 2003)

(a) Contractor responsibility. The Contractor shall establish and maintain a property control system to control, protect, preserve, use, maintain, and repair all Government property in accordance with sound industrial and business practices and the requirements of this contract. The Property Control System shall be in writing unless the Property Administrator determines that maintaining a written system is unnecessary. The Property Control System shall be reviewed and, if satisfactory, approved in writing by the Property Administrator. The system shall be sufficient for the following use:

(1) To assure that Government furnished property (GFP) will be used only for those purposes authorized in the contract and that any required approval will be obtained; and

(2) To provide a basis for determining and allocating rental charges.

(3) With respect to plant equipment with an acquisition value of \$5,000 or more, the Property Control System, as a minimum, shall:

- (i) Establish a minimum level of use below which an analysis of need will be made and retention justified, except for inactive plants and equipment retained for mobilization (the use level may be established for individual items or families of items, depending upon circumstances of use);
- (ii) Provide for recording authorized and actual use consistent with the established use levels;
- (iii) Require periodic analyses of production needs for plant equipment utilization based upon known requirements; and
- (iv) Provide for prompt reporting to the Property Administrator of all plant equipment for which retention is not justified.

(4) With regard to subcontractors, the Property Control System shall include procedures for the Contractor to maintain oversight of the GFP provided to subcontractors and require subcontractors to comply with contract requirements by flowing down all contract property requirements to subcontractors. The Contractor shall require its subcontractors possessing or controlling GFP to adequately safeguard and maintain GFP and that it is used only as authorized by the contract.

(5) The Property Control System shall include procedures to ensure property disposition is in accordance with the instructions of the Contracting Officer or designated representative, including any return to the supplier for appropriate credit whenever feasible.

(b) Audit of property control system. The TSA may audit the Contractor's Property Control System as frequently as conditions warrant. These audits may take place at any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the Contractor is required to retain such records. The Contractor shall make all such records and related correspondence available to the auditors.

(c) Receipts for Government property. The Contractor shall provide written receipts for all Contractor-acquired property before submitting its request for payment for the property. For GFP, the Contractor shall provide the required receipt immediately upon receipt of the property. All receipts shall be provided to the Property Administrator.

(d) Discrepancies incident to shipment.

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(1) Government-furnished property. If overages, shortages, or damages are discovered upon receipt of GFP, the Contractor shall provide a statement of the condition and apparent causes to the Property Administrator. Official records shall reflect the quantity actually received.

(2) Contractor-acquired property. The Contractor shall remedy overages, shortages, or damages in shipment of Contractor-acquired property from a vendor or supplier. However, when the shipment has moved by Government Bill of Lading (GBL) and carrier liability is indicated, the Contractor shall report the discrepancy in accordance with paragraph (1) above.

(e) Records and Reports of TSA Property.

(1) The Contractor's property control records shall constitute the TSA's official property records unless the Contracting Officer indicates otherwise. The Contractor shall establish and maintain adequate control records for all Government property, including property provided to and in the possession or control of a subcontractor. When a subcontractor has an approved property control system for Government property provided under its own prime contracts, the Contractor may use the records created and maintained under that system.

(2) The Contractor's property control system shall provide financial accounts for Government-owned property in the Contractor's possession or control until relieved of that responsibility.

(3) The Contractor's property control records shall identify all Government property and provide a complete, current, auditable record of all transactions. Records shall be accessible to authorized TSA personnel and safeguarded against destruction and tampering.

(4) The Contractor shall keep separate property records for each contract unless otherwise authorized by the TSA Property Administrator.

(5) Special tooling and special test equipment fabricated from materials that are the property of the Government shall be recorded as Government-owned immediately upon fabrication. Special tooling and special test equipment fabricated from materials that are the property of the Contractor shall be recorded as Government property at the time title passes to the Government.

(6) The Contractor shall establish property records for serviceable components permanently removed from items of Government property as a result of modification as the type established for components acquired separately.

(7) The Contractor's property control system shall contain a system or technique to locate any item of Government property within a reasonable period of time.

(f) Basic information.

(1) Unless summary records are used as authorized under subparagraph (f)(2) of this clause, the Contractor's property control records shall provide the following basic information for every item of Government property in the Contractor's possession, regardless of value:

- (i) The name, description, and National Stock Number (if furnished by the TSA or available in the property control system).
- (ii) Quantity received (or fabricated), issued, and on hand.
- (iii) Unit price (and unit of measure).

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- (iv) Contract number or equivalent code designation.
- (v) Location.
- (vi) Disposition.
- (vii) Posting reference and date of transaction.

(2) Summary records are normally adequate for special tooling, special test equipment, and plant equipment costing less than \$5,000 per unit, except where the TSA Property Administrator specifies that individual item records are necessary for effective control, calibration, or maintenance. Summary records shall provide the information listed in paragraphs (1)(i) through (1)(vii) above, but may reference a general location, provided the Contractor can locate the property within a reasonable period of time.

(g) Records of pricing information.

(1) Requirement for unit prices.

- i) The Contractor's property control system shall contain the unit price for each item of Government property except as provided in (ii) below. When a Contractor records the unit price of property on other than the quantitative inventory records, those supplementary records shall become part of the official Government property records.
- (ii) (Note: This subparagraph (ii) does not apply to nonprofit organizations.) The requirement that unit prices be contained in the official Government property records does not apply to those separate property records located at a Contractor's secondary sites and subcontractor plants; provided, that:

- (A) Records maintained by the prime Contractor at its primary site include unit prices; and
- (B) The prime Contractor agrees to furnish actual or estimated unit prices to the secondary site or subcontractor as the need arises.

(iii) When definite information as to unit price cannot be obtained, reasonable estimates shall be used.

(2) Determining unit price.

(i) Contractor-acquired and Contractor-fabricated property. Except for items fabricated by nonprofit organizations for research and development purposes, the unit price of Contractor-acquired and Contractor-fabricated property shall be determined in accordance with the system established by the Contractor in conformance with consistently applied sound accounting principles. The Contractor shall apply separate unit prices to items of special tooling and special test equipment fabricated or acquired by the Contractor unless the TSA Property Administrator approves group pricing for special tooling, special test equipment, and work-in-process in accordance with the Contractor's acceptable cost accounting system. All processed material, fabricated parts, components, and assemblies charged to the Contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for this purpose.

(ii) Government-furnished property. The TSA shall determine and furnish to the Contractor the unit price of Government-furnished property. Transportation and installation costs shall not generally be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the Contractor. In the event the unit price is not provided on the document, the Contractor shall take action to obtain the information.

(h) Records of material.

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(1) General. The Contractor shall record, in accordance with contract requirements and the Contractor's property control system, the following:

- (i) all Government material furnished to the Contractor,
- (ii) all material to which title has passed to the TSA by reason of allocation from Contractor-owned stores,
- (iii) all material acquired by the Contractor for direct charge to an TSA contract.

(2) Consolidated stock record. The Contractor shall not use consolidated stock records without the prior consent of the Property Administrator.

(3) Custodial records. The Contractor shall maintain custodial records for tool crib items, guard force items, protective clothing, and other items issued to individuals for use in their work.

(4) Use of receipt and issue documents. (Note: This paragraph (4) is not applicable to nonprofit organizations.) The Property Administrator may authorize the Contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided material that is issued for immediate consumption and is not entered in the inventory record. This method of control may be authorized for:

- (i) Material charged through overhead;
- (ii) Material under research and development contracts;
- (iii) Subcontracted or outside production items;
- (iv) Non-stock or special items;
- (v) Items that are produced for direct charge to a contract, or are acquired and issued for installation upon receipt, and involve no spoilage; and
- (vi) Items issued from Contractor-owned inventory direct to production or maintenance, etc.

(5) Material issued directly upon receipt. (Note: This paragraph (5) applies only to nonprofit organizations.)

- (i) Under fixed-price contracts, the Contractor's documents evidencing receipt and issue will be accepted as property control records for Government-furnished material issued directly by the Contractor upon receipt so as to be considered consumed under the contract.
- (ii) Under cost-reimbursement contracts, TSA invoices, Contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the Contractor and issued directly so as to be considered consumed under the contract.

(6) Multicontract cost and material control. (Note: This paragraph (6) does not apply to nonprofit organizations.)

(i) Description and scope. A multi-contract cost and material control system substitutes a system of financial accounting for the requirements for physical identification of TSA material. The Contractor shall not use multi-contract cost and material control without the prior consent of the Contracting Officer. (See (ii)(C)(d) below.) The system operates as follows:

- (A) The Contractor may acquire, requisition, receive, store, and issue like items of material for the total requirements of all contracts involved in the system without identifying the material to each contract.
- (B) The Contractor may commingle, during any stage of contract performance, Government-

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owned and Contractor-owned material and work-in-process that was furnished, acquired, or produced for all TSA contracts covered by the system, without physical segregation or identification to the individual contracts.

(C) In lieu of physical segregation and identification to individual contracts, periodic calculation of requirements and distribution of costs to all contracts permits the allocation of costs of material to products delivered. This system, by reflecting the material expended to perform each contract at any stage in production, permits usage analysis to determine the reasonableness of consumption and expenditure of Government material.

(D) The system may include all TSA contracts of any type that involve common repetitive operations.

(E) The system does not require commingling of all common materials under all contracts. For example, items of Government-furnished material of high value or in short supply may be excluded from commingling and reserved for use in performing the contract under which furnished.

(F) The Contractor shall take physical inventories of material in stores included in the systems (other than work-in-process) at least annually, extend and reconcile prices to the quantitative balance for each item, and record adjustments in the stock record and financial inventory control accounts. Such physical inventories and adjustments, as well as equitable distribution to cost accounts of any inventory losses, shall be reviewed by and are subject to the approval of the Property Administrator.

(ii) Criteria. Contractors shall demonstrate the following in order to be considered for a multi-contract cost and material control system:

(A) The system would result in savings or improved operations or that it will otherwise be in the Government's interest;

(B) The system is applied to existing TSA contracts only and excludes materials acquired or costs incurred for non-TSA work or in anticipation of future TSA work; and

(C) The Contractor's accounting system is adequate to:

(aa) Provide on a complete and timely basis a clear 'audit trail' from costs of materials acquired for each contract to materials used or disposed of on each contract;

(bb) Reflect separately for Government-furnished and Contractor-acquired material in stores (except work-in-process) the inventory balances as affected by receipts, issues, adjustments, and other dispositions;

(cc) Determine unit costs for each identifiable part, component, subassembly, assembly, end item, and contract item;

(dd) Calculate amounts for cost reimbursements and progress payments during the life of the contract by applying or allocating such unit costs developed through each stage of work-in-process to contract items for the requirements of each contract; and

(ee) Assure that when Government material furnished for use under one contract is authorized for use on another contract, the initial contract receives credit.

(iii) Authorization. The Contracting Officer may authorize a Contractor who is performing or will perform more than one Government contract to use the multi-contract cost and material control system. The TSA Property Administrator shall approve whatever detailed operating procedures are necessary for each system authorized.

(iv) Requirement. Whenever a multicontract cost and material control system is authorized, the Contractor's financial accounts shall include all material in the system acquired or furnished for TSA work and shall satisfy the requirements of this clause.

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(vi) Records of special tooling and special test equipment. (This sub-section does not apply to nonprofit organizations except for paragraph (3).)

(1) Unless the TSA Property Administrator has authorized summary records, the Contractor's property control system shall provide the basic information listed above (f)(1) regarding each item of Government-owned special tooling and special test equipment, including any general-purpose test equipment incorporated as components in such a manner that removal and reuse may be feasible and economical.

(2) If the Contractor uses group pricing of special tooling or special test equipment, as recognized above in (g)(2), unit prices shall be computed when required.

(3) In the case of special tooling acquired or fabricated by nonprofit organizations or furnished by the TSA to nonprofit organizations for research and development, the Contractor may use invoices, Contractor's purchase document or other documents that evidence acquisition or issue may be accepted as adequate property control records.

(4) Records identifying special tooling and special test equipment shall include the identification number and item on which used.

(5) The Contractor shall, when specified by the contract, identify and report special tooling and special test equipment by retention category (e.g., assembly tooling or critical tooling for spares or replacements).

(j) Records of plant equipment.

(1) Unless the Property Administrator authorizes summary records, the Contractor shall maintain individual item records for each item of plant equipment.

(2) In addition to information required in paragraph (f) of this clause, the Contractor's records of Government-owned plant equipment, regardless of value, shall include:

- (i) Federal Supply Code for the manufacturer (as listed in Cataloging Handbook H4-1 and H4-2) (available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402);
- (ii) Federal Supply Classification (Cataloging Handbooks H2-1, H2-2, and H2-3) (available from GPO); and
- (iii) The original manufacturer's model or part number.

(3) Unless otherwise authorized by the Property Administrator, the Contractor shall also include the following for each item of Government-owned plant equipment having a unit cost of \$5,000 or more:

- (i) Serial number and year built (when available);
- (ii) Government identification/tag number; and
- (iii) Acquisition and disposition document references and dates.

(4) The Property Administrator may determine that the information in (3)(i) and (3)(ii) above shall be recorded in the property records for plant equipment costing less than \$5,000.

(5) The Contractor shall record accessory and auxiliary equipment on the record of the associated item of plant equipment. If the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded either in an individual item record or in a summary

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stock record. When accessory and auxiliary items are permanently separated from the basic item of plant equipment, the unit price of the basic item shall be appropriately reduced.

(k) Records of real property.

(1) The Contractor shall maintain an itemized record of the description, location, acquisition cost, and disposition of all Government real property (including unimproved real property); all alterations, all construction work, and sites connected with such alteration and construction, acquired by purchase, lease, or otherwise. These records, including maps, drawings, plans, specifications, and supplementary data where necessary, shall:

- (i) be complete,
- (ii) show the original cost of the property and improvements and the cost of any changes and additions, and
- (iii) be appropriately indexed.

(2) Costs incurred by the Contractor or the TSA for new construction, including erection, installation, or assembly of Government real property in possession of the Contractor, shall be capitalized in the official Government real property records and financial accounts maintained by the Contractor for the TSA.

(3) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements, including applicable portions of capital maintenance, that increase the value, life, utility, capability, or serviceability of Government real property shall be capitalized.

(4) Costs incurred for portable buildings or facilities specifically constructed for tests that involve destruction of the facility shall not be capitalized in the Government real property records or financial accounts.

(5) Costs incurred for maintenance, repair, or rearrangement to maintain the Government real property in good physical condition, utility, capacity, or serviceability shall be charged to expense, and the real property records shall not be affected.

(6) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place, or condemned, the financial accounts shall be reduced by the presently recorded costs and the real property records annotated with a supporting statement, including pertinent facts.

(l) Records of scrap or salvage.

(1) The Contractor shall maintain records of all scrap or salvage generated, except as provided. These records shall conform to the Contractor's established system of scrap and salvage control approved by the Property Administrator.

(2) The Contractor's property control system shall provide the following information:

- (i) Contract number, if practical, or equivalent code designation from which the scrap or salvage derived.
- (ii) Nomenclature or description of salvable items or classification (material content) of scrap.
- (iii) Quantity on hand.
- (iv) Posting reference and date of transaction.
- (v) Disposition.

(m) Records of related data and information. The Contractor shall maintain property control and accountability,

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in accordance with sound business practice, of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other similar information furnished to the Contractor by the TSA or generated or acquired by the Contractor under the contract and for which title vests in the TSA. The requirements of this subpart do not otherwise apply to such property.

(n) Records of completed products. The Contractor shall maintain a record of all completed products produced under a contract as follows:

- (1) When there is no time lapse between TSA inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summary of quantities accepted and shipped. When end items are accepted by the TSA and stored with the Contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.
- (2) On contracts that provide for the Contractor to retain completed products for further use under the contract or other contracts, such items shall be considered 'Government-furnished property' upon acceptance and shall be recorded as required by this contract.
- (3) When completed products are returned to a Contractor under the terms of a warranty clause, the Contractor shall maintain, by contract, a record containing a description of the items involved, quantities received and returned to the TSA, and other pertinent data necessary to determine that a proper accounting for all property has been made.

(o) Records of transportation and installation costs of plant equipment. (Note: This subsection does not apply to nonprofit organizations.)

(1) Transportation costs.

- (i) The Contractor shall record within the property control system the transportation and installation costs directly borne by the TSA for each item of Government-owned plant equipment with an acquisition cost of \$5,000 or more. The Property Administrator may require the Contractor to provide such recorded costs for use in computing rental charges.
- (ii) If transportation costs are not included in the price of equipment delivered, the Contractor shall contact the Property Administrator for instructions for obtaining applicable freight data.

(2) Installation costs.

- (i) When the Contractor performs installation, the cost shall be computed in accordance with the Contractor's accounting system (if the system is acceptable for other contract cost determination purposes) and recorded in the property record.
- (ii) When installation is subcontracted, the Contractor shall record the cost paid to the subcontractor in the property record.
- (iii) When installation costs are included in the price of equipment delivered to the using location, the Contractor shall annotate the property records accordingly.

(p) Records of misdirected shipments. The Contractor's property control system shall provide the following information regarding each misdirected shipment of Government property received:

- (1) Identity of shipment, such as shipping document or bill of lading.
- (2) Origin of shipment.
- (3) Content (items in the shipment) per shipping documents, if available.

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- (4) Location.
- (5) Disposition.

(q) Records of property returned for rework.

(1) The Contractor shall maintain quantitative records of property returned for processing to assure control from time of receipt through return of the items to the TSA. The Contractor shall establish item records under its property control system and shall include the information required in (f) above.

(2) The records shall specify the quantity of units returned to the TSA and the quantity otherwise disposed of with proper authority.

(r) Reports of TSA property.

(1) The Contractor's property control system shall provide annually the total acquisition cost of Government property for which the Contractor is accountable under each contract with the TSA, including Government property at subcontractor plants and alternate locations. The following classifications (property classifications may be varied to meet individual agency needs) shall be reported:

- (i) Land and rights therein.
- (ii) Other real property, including utility distribution systems, buildings, structures, and improvements thereto.
- (iii) Plant equipment.
- (iv) Special tooling.
- (v) Special test equipment.
- (vi) Material.
- (vii) Agency peculiar property.

(2) The Contractor shall report the information under paragraph (1) as directed by the TSA Property Administrator,

(3) The Contractor shall maintain and provide the following reports to the TSA Property Administrator with copies to the Contracting Officer and Contracting Officer's Representative when appropriate:

- (i) Receipt of Property. The Contractor's written notice of receipt of Government property and any discrepancies, if required, must precede request for payment.
- (ii) Lost, Damaged, Destroyed Property. The Contractor's written report to the TSA Property Administrator of cases of loss, damage, or destruction of Government property in the Contractor's possession or control. The Contractor shall also require its subcontractors possessing or controlling Government property accountable under the contract to investigate and report all instances of loss, damage, or destruction of such property.
- (iii) Annual Financial and Inventory Reports. A copy of the Contractor's annual financial and inventory reports of Government property. The Contractor shall account for all Government property until relieved of responsibility.

(End of clause)

TSA 3.10.3.11 CONTRACTOR'S MAINTENANCE PROGRAM (FEB 2003)

The Contractor shall be responsible for the proper care, maintenance, and use of Government property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound

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industrial practice and the terms of the contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the Contractor of these responsibilities.

(a) Consistent with the terms of the contract, the Contractor's maintenance program shall provide for:

- (1) Disclosure of need for and the performance of preventive maintenance;
- (2) Disclosure and reporting of need for capital rehabilitation; and
- (3) Recording of work accomplished under the program.

(b) Preventive maintenance is maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall include at least:

- (1) Inspection of buildings at periodic intervals to assure detection of deterioration and the need for repairs;
- (2) Inspection of plant equipment at periodic intervals to assure detection of maladjustment, wear, or impending breakdown;
- (3) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;
- (4) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;
- (5) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time;
- (6) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances; and
- (7) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(c) The Contractor's maintenance program shall provide for disclosing and reporting the need for major repair, replacement, and other capital rehabilitation work for Government property in its possession or control.

(d) The Contractor shall keep records of maintenance actions performed and any deficiencies in the Government property discovered as a result of inspections.

(End of clause)

TSA 3.10.3.12 IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY (FEB 2003)

a) Upon receipt of Government property, the Contractor shall promptly:

- (1) Identify the property in accordance with agency regulations;
- (2) Mark the property in accordance with this section; and
- (3) Record the property in its property control records.

(b) (1) Except for the following, the Contractor shall mark all Government property with an identifier of TSA ownership:

- (i) Items issued to individuals for use in their work (e.g., protective clothing or tool crib tools) where adequate physical control is maintained over the items.
 - (ii) Property of a bulk type, or where its general nature of packing or handling precludes adequate marking.
 - (iii) Where the Property Administrator agrees that marking is impractical.
- (2) Exempted items shall be entered and described on the accountable property records.

(c) (1) In addition to marking with an indication of Government ownership, the following property shall be marked with a serial number in accordance with procedures approved by the Property Administrator:

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- (i) Special tooling.
- (ii) Special test equipment.
- (iii) Components of special test equipment that have an acquisition cost of \$5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.
- (iv) Plant equipment.
- (v) Accessory or auxiliary equipment associated with a specific item of plant equipment that is recorded on the property records, if necessary to assure return with the associated basic item.
- (2) The Contractor shall record assigned numbers on all applicable documents pertaining to the property control system.
- (3) If the property is included in a standard agency registration system, the Contractor may use the property's registration number as the serial number. The Contractor shall obtain the registration number through the Property Administrator from the owning agency.

- (d) The markings in paragraphs (b) and (c) of this section shall be:
 - (1) securely affixed to the property,
 - (2) legible, and
 - (3) conspicuous.

Examples of appropriate markings are bar coding, decals, and stamping. If marking will damage the property or is otherwise impractical, the Contractor shall promptly notify the Property Administrator and ask for the item to be exempted (see paragraph (b) of this clause). Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.

(End of clause)

TSA 3.10.3.13 SEGREGATION OF GOVERNMENT PROPERTY (FEB 2003)

The Contractor shall physically separate Government property from Contractor-owned property. However, when advantageous to the TSA and consistent with the Contractor's authority to use such property, the property may be commingled:

- (a) When the Government property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Government property;
- (b) When approved by the TSA Property Administrator in connection with research and development contracts;
- (c) When material is included in a multi-contract cost and material control system;
- (d) When scrap of a uniform nature is produced from both Government-owned and Contractor-owned material and physical segregation is impracticable;
- (e) When scrap produced from TSA-owned material is insignificant in consideration of the cost of segregation and control;
- (f) When TSA contracts involved are fixed-price and provide for the retention of the scrap by the Contractor; or
- g) When otherwise approved by the TSA Property Administrator.

(End of clause)

TSA 3.10.3.14 INVENTORIES (FEB 2003)

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(a) Monthly Inventories

- (1) The Contractor shall provide to the TSA's Property Administrator a quarterly (or other time frame as agreed to by the Contractor and the Contracting Officer) listing of all Government property in their possession (this includes GFP and CAP).
- (2) The Contractor may electronically reproduce standard inventory schedule forms provided no change is made to the name, content or sequence of the data elements. All essential elements of data must be included and the form must be signed.
- (3) The Contractor shall use inventory schedule to report all transaction of Government property in Contractor's possession or control and shall cause subcontractors to do likewise.

(b) Physical Inventories.

The Contractor shall periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the contract) in its possession or control and shall cause subcontractors to do likewise. The Contractor, with the approval of the Property Administrator, shall establish the type, frequency, and procedures. These may include electronic reading, recording and reporting or other means of reporting the existence and location of the property and reconciling the records. Type and frequency of inventory shall be based on the Contractor's established practices, the type and use of the Government property involved, or the amount of Government property involved and its monetary value, and the reliability of the Contractor's property control system. Type and frequency of physical inventories normally shall not vary between contracts being performed by the Contractor, but may vary with the type of property being controlled. Personnel who perform the physical inventory should not be the same personnel who prepare the monthly inventories.

(c) Inventories upon termination or completion.

- (1) General. Immediately upon termination or completion of a contract, the Contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract, unless the requirement is waived as provided in paragraph (2) below.
- (2) Exception. The requirement for physical inventory at the completion of a contract may be waived by the Property Administrator when the property is authorized for use on a follow-on contract; provided, that:
 - (i) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and
 - (ii) The Contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the Contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.
- (3) Listings for disposal purposes. (Note: This paragraph (3) applies only to nonprofit organizations.)
 - (i) Standard items that have been modified may be described on listings for disposal purposes as standard items with a general description of the modification.
 - (ii) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

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(d) Reporting results of inventories. The Contractor shall, as a minimum, submit the following to the TSA Property Administrator promptly after completing the physical inventory:

- (1) A listing that identifies all discrepancies disclosed by a physical inventory.
- (2) A signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement except for discrepancies reported.

(e) Quantitative and monetary control. When requested by the Property Administrator, the Contractor's reports of results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.

(End of clause)

TSA 3.10.3.15 DISPOSITION OF GOVERNMENT PROPERTY (FEB 2003)

(a) Submission of inventory schedules.

(1) When property is no longer needed to perform the contract, the Contractor shall prepare inventory schedules in accordance with the contract and instructions from the plant clearance officer or TSA Property Administrator and shall promptly submit the schedules to the TSA Property Administrator. Inventory schedules may also be used for screening with other Federal agencies.

(2) The certificate on the inventory schedule must be executed when Contractor inventory is reported. The prime Contractor shall execute this certificate, except that for subcontractor termination inventory the subcontractor shall execute the certificate.

(3) The Contractor's inventory schedules shall not include any items that the Contractor can reasonably use on other Government work without financial loss. However, the schedules shall include common items specified by the Contracting Officer for delivery to the Government or which are Government-furnished property.

(4) The contract may authorize the Contractor to electronically reproduce inventory schedules provided no change is made in the name, content or sequence of the data elements. All essential elements of data must be included and the form must be signed.

(b) Acceptance. Within 15 days after receipt of inventory schedules, the plant clearance officer or Property Administrator should review them, determine their acceptability, and request the Contractor to correct any inadequate listings. Inventory schedules should not be rejected if the information is adequate for disposal purposes, even if complete cost data on work-in-process are not available. Rejection should be limited, when possible, to specific items and should not necessarily render the entire schedule unacceptable. If substantial errors are discovered that were not apparent on termination inventory schedules previously found acceptable, the final phase of a plant clearance period should not begin until corrected schedules have been submitted, unless the plant clearance officer or Property Administrator determines otherwise.

(c) Excess inventories.

(1) Contractors shall report Contractor inventory promptly after determining it to be excess, unless a later date is authorized by the Contracting Officer or Property Administrator.

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(2) Unless contract provisions or agency regulations prescribe otherwise, 12 copies of inventory schedules listing serviceable or salvable items and 6 copies of inventory schedules listing scrap items shall be presented to the Property Administrator.

(3) The Contractor shall not submit partial schedules unless authorized by the TSA Property Administrator. The first page of each schedule submitted shall be identified as partial or final in the title block of the schedule.

(End of clause)

END OF SECTION

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SECTION I: CONTRACT CLAUSES

PROVISIONS:

| \$ | Bus. Size | CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|-----------|----------------------|-------------|-------------|-------------------------------------|-------------|--|
| | | ✓ | ✓ | 3.2.2.3.1 | JUL 2004 | FALSE STATEMENTS IN OFFERS |
| >\$10M | | ✓ | ✓ | 3.6.2.7 | FEB 2003 | PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW |
| | | ✓ | ✓ | 3.13.4 | AUG 1997 | CONTRACTOR IDENTIFICATION NUMBER—DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER |

3.2.3.3-1 FALSE STATEMENTS IN OFFERS (JULY 2004)

Offerors must provide full, accurate, and complete information as required by this RFI/RFP and its attachments. The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(End of provision)

3.6.2-7 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (FEBRUARY 2003)

An award in the amount of \$10 million or more will not be made under this screening information request unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of \$10 million or more are found, on the basis of a compliance review, to be able to comply with the provisions of the "Equal Opportunity" clause of this screening information request.

(End of provision)

3.13-4 CONTRACTOR IDENTIFICATION NUMBER—DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (FEBRUARY 2003)

(a) "Contractor Identification Number," as used in this provision, means "Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror shall submit its DUNS number, annotated as "DUNS" following its name and address on the cover sheet of its proposal.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.

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- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(d) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.dbis.customer/custlist.htm>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@dbisma.com.

(End of provision)

CLAUSES:

| \$ | Bus. Size | CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|-------|-----------|------|------|----------------------------|----------|--|
| >\$5M | | ✓ | ✓ | 3.1.8.1 | FEB 2003 | CANCELLATION, RESCISSION AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY |
| <\$5M | | ✓ | ✓ | 3.1.8.2 | FEB 2003 | PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY |
| | | ✓ | ✓ | 3.2.2.3.8 | FEB 2003 | AUDITS AND RECORDS |
| | | ✓ | ✓ | 3.2.2.3.25 | FEB 2003 | PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA |
| | | ✓ | ✓ | 3.2.2.3.26 | FEB 2003 | PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS |
| | | ✓ | ✓ | 3.2.2.3.27 | FEB 2003 | SUBCONTRACTOR COST OR PRICING DATA |
| | | ✓ | ✓ | 3.2.2.3.28 | FEB 2003 | SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS |
| | | ✓ | ✓ | 3.2.2.3.30 | FEB 2003 | TERMINATION OF DEFINED BENEFIT PENSION PLANS |
| | | ✓ | ✓ | 3.2.2.3.32 | FEB 2003 | WAIVER OF FACILITIES CAPITAL COST OF MONEY |
| | | ✓ | ✓ | 3.2.2.3.33 | FEB 2003 | ORDER OF PRECEDENCE |
| | | ✓ | ✓ | 3.2.2.3.36 | FEB 2003 | REVERSION OR ADJUSTING OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB) |
| | | ✓ | ✓ | 3.2.2.7.6 | FEB 2003 | PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT |
| | Large | ✓ | | 3.2.3.2 | FEB 2003 | COST ACCOUNTING STANDARDS |
| | Large | ✓ | | 3.2.3.3 | FEB 2003 | DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES |
| | | ✓ | | 3.2.3.5 | FEB 2003 | ADMINISTRATION OF COST ACCOUNTING STANDARDS |
| | | ✓ | ✓ | 3.2.4.34 | FEB 2003 | OPTION TO EXTEND SERVICES |
| | | ✓ | ✓ | 3.2.5.3 | FEB 2003 | GRATUITIES OR GIFTS |
| | | ✓ | ✓ | 3.2.5.4 | FEB 2003 | CONTINGENT FEES |
| | | ✓ | ✓ | 3.2.5.5 | FEB 2003 | ANTI-KICKBACK PROCEDURES |
| | | ✓ | ✓ | 3.2.5.6 | FEB 2003 | RESTRICTIONS ON SUBCONTRACTOR SALES TO THE TSA |
| | | | ✓ | 3.3.1.1 | FEB 2003 | PAYMENTS |
| | | | ✓ | 3.3.1.6 | FEB 2003 | DISCOUNTS FOR PROMPT PAYMENT |
| | | ✓ | ✓ | 3.3.1.7 | FEB 2003 | LIMITATION ON WITHHOLDING OF PAYMENTS |
| | | | ✓ | 3.3.1.8 | FEB 2003 | EXTRAS |

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| \$ | Bus. Size | CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|---------|--------------|------|------|----------------------------|----------|---|
| | | | ✓ | 3.3.1.9 | FEB 2003 | INTEREST |
| | | ✓ | ✓ | 3.3.1.15 | FEB 2003 | ASSIGNMENT OF CLAIMS |
| | | | ✓ | 3.4.1.10 | FEB 2003 | INSURANCE – WORK ON A GOVERNMENT INSTALLATION |
| | | ✓ | | 3.4.1.11 | FEB 2003 | INSURANCE – LIABILITY TO THIRD PERSONS |
| | | ✓ | ✓ | 3.4.2.6 | AUG 2002 | TAXES – CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO |
| | | | ✓ | 3.4.2.8 | FEB 2003 | FEDERAL, STATE, AND LOCAL TAXES – FIXED PRICE CONTRACT |
| | | ✓ | ✓ | 3.5.1 | FEB 2003 | AUTHORIZATION AND CONSENT |
| | | ✓ | ✓ | 3.5.2 | FEB 2003 | NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT |
| | | ✓ | ✓ | 3.5.3 | FEB 2003 | PATENT INDEMNITY |
| | | ✓ | ✓ | 3.5.13 | FEB 2003 | RIGHTS IN DATA-GENERAL |
| | | ✓ | ✓ | 3.5.13.2 | FEB 2003 | RIGHTS IN DATA-GENERAL, ALT II (FEB 2003) |
| | | ✓ | ✓ | 3.5.13.3 | FEB 2003 | RIGHTS IN DATA-GENERAL, ALT III (FEB 2003) |
| | | ✓ | ✓ | 3.5.13.5 | FEB 2003 | RIGHTS IN DATA-GENERAL, ALT V (FEB 2003) |
| | | ✓ | ✓ | 3.5.18 | FEB 2003 | COMMERCIAL COMPUTER SOFTWARE – RESTRICTED RIGHTS |
| | | ✓ | ✓ | 3.6.1.1 | FEB 2003 | NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (NOTE: SMALL BUSINESS SETASIDE ONLY) |
| | | ✓ | ✓ | 3.6.1.3 | FEB 2003 | UTILIZATION OF SMALL BUSINESS CONCERNS |
| >\$200K | Large | ✓ | ✓ | 3.6.1.4 | FEB 2003 | SMALL, SMALL DISADVANTAGED, WOMEN-OWNED AND SERVICE-DISABLED VETERAN OWNED SMALL BUSINESS SUBCONTRACTING PLAN |
| | | ✓ | ✓ | 3.6.1.6 | FEB 2003 | LIQUIDATED DAMAGES – SUBCONTRACTING PLAN |
| | Small | ✓ | ✓ | 3.6.1.7 | AUG 1997 | LIMITATIONS ON SUBCONTRACTING (NOTE: SMALL BUSINESS SET-ASIDE ONLY.) |
| | | ✓ | ✓ | 3.6.2.2 | FEB 2003 | CONVICT LABOR |
| | | ✓ | ✓ | 3.6.2.5 | FEB 2003 | PROHIBITION OF SEGREGATED FACILITIES |
| | | ✓ | ✓ | 3.6.2.9 | FEB 2003 | EQUAL OPPORTUNITY |
| | | ✓ | ✓ | 3.6.2.12 | FEB 2003 | AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS |
| | | ✓ | ✓ | 3.6.2.13 | FEB 2003 | AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES |
| | | ✓ | ✓ | 3.6.2.14 | FEB 2003 | EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA |
| | | ✓ | ✓ | 3.6.2.16 | FEB 2003 | NOTICE TO THE GOVERNMENT OF LABOR DISPUTES |
| | | ✓ | ✓ | 3.6.2.28 | FEB 2003 | SERVICE CONTRACT ACT OF 1965, AS AMENDED |
| | | | ✓ | 3.6.2.30 | FEB 2003 | FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) |
| | | ✓ | ✓ | 3.6.3.7 | FEB 2003 | WASTE REDUCTION PROGRAM |
| | | ✓ | ✓ | 3.6.3.11 | FEB 2003 | TOXIC CHEMICAL RELEASE REPORTING |
| | | ✓ | ✓ | 3.6.3.16 | JAN 2004 | DRUG-FREE WORKPLACE |
| | | ✓ | ✓ | 3.6.4.2 | FEB 2003 | BUY AMERICAN ACT - SUPPLIES |
| | | ✓ | ✓ | 3.6.4.8 | FEB 2003 | BUY AMERICAN ACT – NAFTA IMPLEMENTATION ACT – BALANCE OF PAYMENTS PROGRAM |

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| \$ | Bus. Size | CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|---------------------|--------------|------|------|----------------------------|----------|---|
| | | ✓ | ✓ | 3.6.4.10 | FEB 2003 | RESTRICTIONS ON CERTAIN FOREIGN PURCHASES |
| Supplies <\$190K | | ✓ | ✓ | 3.6.4.12 | FEB 2003 | SANCTIONED EUROPEAN UNION COUNTRY END PRODUCTS |
| Supplies <\$190K | | ✓ | ✓ | 3.6.4.13 | FEB 2003 | SANCTIONED EUROPEAN UNION COUNTRY |
| | | ✓ | ✓ | 3.6.5.1 | FEB 2003 | UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES |
| | | ✓ | ✓ | 3.7.1 | FEB 2003 | PRIVACY ACT NOTIFICATION |
| | | ✓ | ✓ | 3.7.2 | FEB 2003 | PRIVACY ACT |
| | | ✓ | ✓ | 3.8.2.10 | FEB 2003 | PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION |
| | | ✓ | ✓ | 3.8.2.11 | FEB 2003 | CONTINUITY OF SERVICES |
| | | ✓ | ✓ | 3.8.4.5 | FEB 2003 | GOVERNMENT SUPPLY SOURCES |
| | | ✓ | ✓ | 3.9.1.1 | FEB 2003 | CONTRACT DISPUTES |
| | | ✓ | ✓ | 3.9.1.2 | FEB 2003 | PROTEST AFTER AWARD |
| | | ✓ | | 3.10.1.1 | FEB 2003 | NOTICE OF INTENT TO DISALLOW COSTS |
| | | ✓ | | 3.10.1.3 | FEB 2003 | PENALTIES FOR UNALLOWABLE COSTS |
| | | ✓ | ✓ | 3.10.1.7 | FEB 2003 | BANKRUPTCY |
| | | | ✓ | 3.10.1.12 | FEB 2003 | CHANGES – FIXED PRICE |
| | | | ✓ | 3.10.1.12.2 | FEB 2003 | CHANGES – FIXED PRICE (ALT II) |
| | | ✓ | | 3.10.1.13. | FEB 2003 | CHANGES – COST REIMBURSEMENT (FEB 2003) |
| | | ✓ | | 3.10.1.13.2 | FEB 2003 | CHANGES – COST REIMBURSEMENT (ALT II) (FEB 2003) |
| | | | | 3.10.1.14 | APR 1996 | CHANGES - TIME AND MATERIALS OR LABOR HOURS (T&M) |
| | | | ✓ | 3.10.2.1 | FEB 2003 | SUBCONTRACTS – FIXED PRICE CONTRACTS |
| | | | | 3.10.2.3 | FEB 2003 | SUBCONTRACTS - TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS |
| | | | | 3.10.2.5 | FEB 2003 | COMPETITION IN SUBCONTRACTING |
| | | | ✓ | 3.10.6.1 | AUG 2002 | TERMINATION FOR CONVENIENCE OF THE GOVERNMENT – FIXED PRICE |
| | | ✓ | | 3.10.6.3 | FEB 2003 | TERMINATION (COST-REIMBURSEMENT) |
| | | | | 3.10.6.3.4 | FEB 2003 | TERMINATION - COST-REIMBURSEMENT - ALTERNATE IV (T&M) |
| | | | ✓ | 3.10.6.4 | FEB 2003 | DEFAULT – FIXED PRICE SUPPLY AND SERVICE |
| | | ✓ | ✓ | 3.10.6.7 | FEB 2003 | EXCUSABLE DELAYS (COST REIMBURSABLE, T&M) |
| | | ✓ | ✓ | 3.13.3 | FEB 2003 | PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER |
| | | ✓ | ✓ | 3.13.10 | JAN 2003 | CONTRACTOR ATTENDANCE AT TSA SPONSORED TRAINING |

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3.1.8.1 CANCELLATION, RECISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (FEB 2003)

If the Government receives information that a contractor or person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may-

(1) Cancel the screening information request, if the contract has not been awarded or issued; or

(2) Rescind the contract with respect to which-

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either-

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of an TSA procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor, or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsection 27 (e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

3.1.8.2 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (FEB 2003)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the TSA's Acquisition Management System (TSAMS).

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be-

(1) For cost-plus-fixed-fee contracts, the amount of fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

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(3) For cost-plus-award-fee contracts-

- (i) The base fee established in the contract at the time of contract award;
- (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may-

- (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
- (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the contracting officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government, may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraph (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive and are in addition to any rights and remedies provided by law or under this contract.

(End of clause)

3.2.2.3-8 AUDIT AND RECORDS (JULY 2004)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, laborhour, or price-re-determinable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examinations shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

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(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the contract, subcontract, modification;
- (2) The communications conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General--

- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
- (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and
- (2) The data reported.

(f) Availability of Records. The Contractor shall make available at its office at all reasonable times the records, materials and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any longer period required by statute or by other clauses of this contract. In addition--

- (1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
- (2) Records relating to appeals under the Contract Disputes clause or to litigation or the settlement of contract disputes arising under or relating to this contract shall be made available until such appeals, litigation, or contract disputes are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed \$1,000,000, and

- (1) Those that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) Those that require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

This clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

3.2.2.3.25 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (FEB 2003)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because

- (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

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(2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or

(3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which

(1) the actual subcontract or

(2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

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(ii) An offset shall not be allowed if--

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

(End of clause)

**3.2.2.3.26 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA –
MODIFICATIONS (FEB 2003)**

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$550,000, except that this clause does not apply to any modification awarded on the basis of price competition, catalog or market price, or prices set by law or regulation.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because:

(1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

(2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or

(3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

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(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which

(1) the actual subcontract or

(2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

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(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

(End of clause)

3.2.2.3.27 SUBCONTRACTOR COST OR PRICING DATA (FEB 2003)

(a) Before awarding any subcontract expected to exceed \$1,000,000, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$1,000,000 the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless award is based on price competition, catalog or market price, or prices set by law or regulation.

(b) The Contractor shall require the subcontractor to certify that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds \$550,000, when entered into, the Contractor shall insert --

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract.

(2) the substance of the clause, Subcontractor Cost or Pricing Data - Modifications

(End of clause)

3.2.2.3-28 SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS (FEBRUARY 2003)

(a) The requirements of paragraphs (b) and (c) of this clause shall

(1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$550,000, and

(2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed \$550,000, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Contractor shall require the subcontractor to submit cost or pricing data

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(actually or by specific identification in writing), unless award is based on price competition, catalog or market price, or prices set by law or regulation.

(c) The Contractor shall require the subcontractor to certify that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$550,000 on the date of agreement on price or the date of award, whichever is later.

(End of clause)

3.2.2.3.30 TERMINATION OF DEFINED BENEFIT PENSION PLANS (FEB 2003)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share. The Contractor shall include the substance of this clause in all subcontracts requiring cost and price data and exceeding \$1,000,000 under this contract.

(End of clause)

3.2.2.3.32 WAIVER OF FACILITIES CAPITAL COST OF MONEY (FEB 2003)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

3.2.2.3.33 ORDER OF PRECEDENCE (JULY 2004)

Any inconsistency in this RFI/RFP or contract shall be resolved by giving precedence in the following order:

- (a) the Schedule (excluding the specifications);
- (b) representations and other instructions;
- (c) contract clauses;
- (d) other documents, exhibits, and attachments;
- (e) the specifications; and
- (f) the drawings.

(End of clause)

3.2.2.3.36 REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (FEB 2003)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share. The Contractor shall include the substance of this clause in all subcontracts under this contract which exceed \$1,000,000 and for which cost and price data are required. The resulting adjustment to prior years' PRB costs will be determined and applied.

(End of clause)

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**3.2.2.7.6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING
WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR
DEBARMENT (FEB 2003)**

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Contractor shall require each proposed first-tier subcontractor, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment. The notice must include the following:
- (1) The name of the subcontractor.
 - (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.
 - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

3.2.3.2 COST ACCOUNTING STANDARDS (FEB 2003)

- (a) Unless the contract is exempt from CAS rules, the provisions of CAS rules are incorporated herein by reference and the Contractor, in connection with this contract, shall--
- (1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by CAS rules, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.
 - (2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be

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amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in CAS rules, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed in accordance with the "Interest" clause, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS rule and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on-

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(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in CAS rules.

(End of clause)

3.2.3.3 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (FEB 2003)

(a) The Contractor, in connection with this contract, shall--

(1) Comply with the requirements of CAS rules, Consistency in Estimating, Accumulating, and Reporting Costs; Consistency in Allocating Costs Incurred for the Same Purpose; Accounting for Unallowable Costs; and Cost Accounting Standard-Cost Accounting Period, in effect on the date of award of this contract as indicated in CAS rules.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by CAS rules. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)

(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required CAS rules, that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in CAS rules and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute.

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- (c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
- (d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that-
- (1) If the subcontract is awarded to a business unit which pursuant CAS rules is required to follow all CAS, the clause entitled "Cost Accounting Standards", shall be inserted in lieu of this clause; or
- (2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based
- (i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (ii) Price set by law or regulation; or
- (3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified CAS rules.

(End of clause)

3.2.3.5 ADMINISTRATION OF COST ACCOUNTING STANDARDS (FEB 2003)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

- (1) For any change in cost accounting practices required to comply with a new or modified CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause "Cost Accounting Standards" within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
- (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause "Cost Accounting Standards" or with subparagraph (a)(3) of the clause "Disclosure and Consistency of Cost Accounting Practices" not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
- (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) of the clause "Cost Accounting Standards" or by subparagraph (a)(4) of the clause "Disclosure and Consistency of Cost Accounting Practice":

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(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an Contracting Officer determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause "Cost Accounting Standards" shall identify the applicable standard and all contracts and subcontracts containing the clause in this contract entitled Cost Accounting Standards, which have an award date before the effective date of that standard.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4) (ii) or (iii) of the clause "Cost Accounting Standards" or with subparagraph (a)(3) of the clause "Disclosure and Consistency of Cost Accounting Practices" shall identify all contracts and subcontracts containing the clause "Cost Accounting Standards" and "Disclosure and Consistency of Cost Accounting Practices."

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause "Cost Accounting Standards" or by subparagraph (a)(4) of the clause "Disclosure and Consistency of Cost Accounting Practices" shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause or with subparagraphs (a)(3) or (a)(4) of the "Disclosure and Consistency of Cost Accounting Practices" clause.

(e) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause-

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's

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cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

- (i) Subcontractor's name and subcontract number.
- (ii) Dollar amount and date of award.
- (iii) Name of Contractor making the award.
- (iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

3.2.4.34 OPTION TO EXTEND SERVICES (FEB 2003)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within the period specified in the Schedule.

(End of clause)

3.2.5.3 GRATUITIES OR GIFTS (FEB 2003)

(a) The TSA may terminate this contract for default if, after notice and a hearing, the TSA Office of Dispute Resolution for Acquisition determines that the Contractor, the contractor's agent, or other representative:

- (1) Offered or gave a gratuity or gift to an employee of the TSA; and
- (2) Intended, by the gratuity or gift to obtain a contract or favorable treatment under a contract.

(b) If this contract is terminated under paragraph (a) of this clause, the TSA is entitled to pursue the same remedies as in a breach of contract.

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The rights and remedies of the TSA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

3.2.5.4 CONTINGENT FEES (FEB 2003)

(a) The Contractor warrants that no person or selling agency has been employed or retained to solicit or obtain this contract for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bonafide, established commercial or selling agencies employed by the contractor for the purpose of obtaining business.

(b) For breach or violation of this warranty, the Government has the right to annul this contract without liability or to deduct from the contract price or otherwise recover, the full amount of the contingent fee.

(c) Definitions.

(1) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

(2) "Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

(3) "Contingent fee," as used in this clause, means any commission, percentage brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

(4) "Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

3.2.5.5 ANTI-KICKBACK PROCEDURES (FEB 2003)

(a) Definitions.

(1) "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

(2) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(3) "Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

(4) "Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

(5) "Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent

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of a prime Contractor.

(6) "Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

(7) "Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

(8) "Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) The contractor warrants that it has not and will not be:
- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c)
- (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
 - (2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the Inspector General of the Department of Transportation or the Department of Justice.
 - (3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
 - (4) The Contracting Officer may
 - (i) offset the amount of the kickback against any moneys owed by the United States under the prime contract and/or
 - (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that moneys withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those moneys under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the moneys are withheld.
 - (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract.

(End of clause)

3.2.5.6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE TSA (FEB 2003)

(a) Except as provided in (b) below, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the TSA of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) above does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

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(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract.

(End of clause)

3.3.1-1 PAYMENTS (FEBRUARY 2003)

The Government shall pay the Contractor, upon the submission of proper invoices, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of partial deliveries or any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

13.3.1-6 DISCOUNTS FOR PROMPT PAYMENT (FEBRUARY 2003)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

(End of clause)

3.3.1.7 LIMITATION ON WITHHOLDING OF PAYMENTS (FEB 2003)

If more than one clause or "Schedule" term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or "Schedule" term at that time; provided, that this limitation shall not apply to-

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

3.3.1.8 EXTRAS (FEB 2003)

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Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Contracting Officer.

(End of clause)

3.3.1.9 INTEREST (FEB 2003)

(a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to the TSA or by the TSA to the Contractor under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, referred to as the 'Renegotiation Board Interest Rate,' (It is published in the Federal Register semiannually on or about January 1 and July 1), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
- (3) The date the TSA transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(End of clause)

3.3.1.15 ASSIGNMENT OF CLAIMS (FEB 2003)

(a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

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3.4.1-10 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (FEBRUARY 2003)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the "Schedule" or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing by letter or certificate of insurance, reflecting TSA's contract number, that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Transportation Security Administration's interest shall not be effective:

(1) for such period as the laws of the State in which this contract is to be performed prescribe, or

(2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the "Schedule" or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies (reflecting the TSA's contract number to ensure proper filing of documents) available to the Contracting Officer upon request.

(End of clause)

3.4.1-11 INSURANCE--LIABILITY TO THIRD PERSONS (FEBRUARY 2003)

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed:

(1) For that portion (i) of the reasonable cost of insurance allocable to this contract, and (ii) required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for:

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

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(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)-

- (1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the "Schedule" or elsewhere in the contract;
- (2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or
- (3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
 - (i) All or substantially all of the Contractor's business;
 - (ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
 - (iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; provided, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall:

- (1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
- (2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
- (3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

**3.4.2-6 TAXES--CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO
(August 2002)**

The term 'local taxes,' as used in the "Federal, State, and Local Taxes - Fixed Price Contract" clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

(End of clause)

3.4.2.8 FEDERAL, STATE, AND LOCAL TAXES – FIXED PRICE CONTRACT (FEB 2003)

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(a) Definitions:

- (1) 'Contract date,' as used in this clause, means the effective date of this contract or modification.
- (2) 'All applicable Federal, State, and local taxes and duties,' as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.
- (3) 'After-imposed Federal tax,' as used in this clause, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.
- (4) 'After-relieved Federal tax,' as used in this clause, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

3.5.1 AUTHORIZATION AND CONSENT (FEB 2003)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent.

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or,

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with;

(i) Specifications or written provisions forming a part of this contract or

(ii) Specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States may be determined solely by the provisions of

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the Indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services. However, omission of this clause from any subcontract does not affect this authorization and consent.)

(End of clause)

3.5.2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
(February 2003)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information may be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services).

(End of clause)

3.5.3 PATENT INDEMNITY (February 2003)

(a) The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as construction work) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to.

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor,

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance, or

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(3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

3.5.13 RIGHTS IN DATA – GENERAL (FEB 2003)

(a) Definitions.

- (1) "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.
- (2) "Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.
- (3) "Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (4) "Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.
- (5) "Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
- (6) "Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
- (7) "Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.
- (8) "Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.
- (9) "Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of rights.

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in-
 - (i) Data first produced in the performance of this contract;
 - (ii) Form, fit, and function data delivered under this contract;
 - (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

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(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to--

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

(1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government may acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national

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security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination may become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government may thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request there under.

(3) Reserved.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from filing a claim under the "Contract Disputes" clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

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(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, may be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor-

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized;
- (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor may withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor may identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) Reserved.

(3) Reserved

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

TSA 3.5.13 RIGHTS IN DATA – GENERAL – ALT II (FEB 2003)

Insert the following in paragraph (g).

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following Limited Rights Notice to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE

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(a) These data are submitted with limited rights under Government Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure: _____ [Agencies may list additional purposes or if none, so state]

(b) This Notice may be marked on any reproduction of these data, in whole or in part.
(End of notice)

TSA 3.5.13 RIGHTS IN DATA – GENERAL, ALT III (FEB 2003)

Insert the following in paragraph (g).

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following Restricted Rights Notice to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(b) This computer software may be-

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
- (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
- (3) Reproduced for safekeeping (archives) or backup purposes;
- (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
- (5) Disclosed to and reproduced for use by support service Contractors in accordance with subparagraphs (b) (1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and
- (6) Used or copied for use in or transferred to a replacement computer.
- (7) Other uses _____

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(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short- form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE (SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract _____, if appropriate) with _____ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: Unpublished-rights reserved under the Copyright Laws of the United States.

(End of clause)

TSA 3.5.13 RIGHTS IN DATA – GENERAL, ALT V (FEB 2003)

Add the following paragraph (j).

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer may designate an alternate inspector.

(End of clause)

TSA 3.5.18 COMMERCIAL COMPUTER SOFTWARE –RESTRICTED RIGHTS (FEB 2003)

(a) As used in this clause, "restricted computer software" means any computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted.

(b) Notwithstanding any provisions to the contrary contained in any Contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this purchase order/contract, and irrespective of whether any such agreement has been proposed prior to or after issuance of this purchase order/contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, vendor agrees that the Government may have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any restricted computer software delivered under this purchase

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order/contract. The terms and provisions of this contract, including any commercial lease or license agreement, shall be subject to paragraph (c) of this clause and shall comply with applicable Federal laws.

(c)(1) The restricted computer software delivered under this contract shall not be used, reproduced or disclosed by the Government except as provided in subparagraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The restricted computer software may be-

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this purchase order/contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this purchase order/contract; and

(vi) Used or copied for use in or transferred to a replacement computer.

(3) If the restricted computer software delivered under this purchase order/contract is published and copyrighted, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in subparagraph (c)(2) of this clause unless expressly stated otherwise in this purchase order/contract.

(4) To the extent feasible the Contractor shall affix a Notice substantially as follows to any restricted computer software delivered under this purchase order/contract; or, if the vendor does not, the Government has the right to do so: "Notice-Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract No. _____."

(d) If any restricted computer software is delivered under this contract with the copyright notice of 17 U.S.C. 401, it will be presumed to be published and copyrighted and licensed to the Government in accordance with subparagraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice: "Unpublished-rights reserved under the copyright laws of the United States."

(End of clause)

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3.6.1-1 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (FEBRUARY 2003)

For use in contracts that are set-aside for small business.

(a) Definition. Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the standard industrial classification size standards in this Screening Information Request (SIR). (b) General. (1) Information and/or offers are requested only from small business concerns. Information and/or offers received from concerns that are not small business concerns shall be considered non-responsive and will be rejected. (2) Any award resulting from this SIR will be made to a small business concern. (c) Agreement. A manufacturer or regular dealer submitting information and/or an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

3.6.1.3 USE OF SMALL BUSINESS CONCERNS (FEB 2003)

(a) It is the policy of the Transportation Security Administration (TSA) that small business concerns, small disadvantaged business concerns, HUBZone small business concerns, veteran-owned small business concerns, service-disabled veteran owned small business concerns, and women-owned small business concerns shall be provided the opportunities to participate in performing TSA contracts, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the TSA that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with these small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys conducted by the TSA as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions.* As used in this contract:

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“Service-disabled veteran-owned small business concern” –

(1) Means a small business concern –

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veteran; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans, or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act, and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern" means a small business concern that represents, as part of its offer that

–
(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B:

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged in the database maintained by the Small Business Administration (PRO-Net).

"Veteran-owned small business concern" means a small business concern –

(1) Not less than 51 percent of which is owned by one or more veterans (as defined in 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern –

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small disadvantaged business concern, a veteran-owned small business concern, a service-disabled veteran owned small business concern, a HUBZone small business concern or a women-owned small business concern.

(End of clause)

3.6.1.4 SMALL, SMALL DISADVANTAGED, WOMEN-OWNED, VETERAN-OWNED AND SERVICE-DISABLED VETERAN OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 2002)

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(a) This clause does not apply to small business concerns.

(b) Definitions:

(1) Commercial product, as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the judgment of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

(2) Subcontract, as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(3) The terms "small disadvantaged business" shall mean a small business concern:

(i) Which is at least 51 percent unconditionally owned by one or more disadvantaged individuals; or, in the case of any publicly owned business at least 51 percent of the stock of which is unconditionally owned by one or more disadvantaged individuals; and

(ii) Whose management and daily business operations are controlled by one or more of such individuals.

(iii) This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans and other minorities, or any other individual found to be disadvantaged by the TSA. The contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(4) The term "small business concern owned and controlled by women" shall mean a small business concern:

(i) Which is at least 51 percent owned by one or more women or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(5) The term "service disabled veteran owned small business concern" shall mean a small business that is 51 percent owned and controlled by a service disabled veteran(s).

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(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns, with women-owned small business concerns, veteran owned small business concerns and service-disabled veteran owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns, women-owned small business concerns and service-disabled veteran owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns, women-owned small business concerns, veteran owned small business concerns, and service-disabled veteran owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns;

(iv) Total dollars planned to be subcontracted to women-owned small business concerns: and

(v) Total dollars planned to be subcontracted to service-disabled veteran owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to

(i) small business concerns,

(ii) small disadvantaged business concerns,

(iii) women-owned small business concerns and (iv) service-disabled veteran owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

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(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-NET) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged and women- owned small business concerns trade associations). A firm may rely on the information contained in PRO-NET as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PRO-NET as its small business source list. Use of the PRO-NET as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with;

(i) small business concerns,

(ii) small disadvantaged business concerns,

(iii) women-owned small business concerns, and

(iv) service-disabled veteran owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small, small disadvantaged, women-owned, service-disabled veteran owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract titled ``Utilization of Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$5,000,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will:

(i) Cooperate in any studies or surveys as may be required,

(ii) Submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan,

(iii) Submit Subcontracting Reports for Individual Contracts (SF-294) in electronic format (MS Excel File Size 4KB) to the Contracting Officer. Submit SF- 295, Summary Subcontract Report, in accordance with the instructions on the SF 295.

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(iv) Ensure that its subcontractors agree to submit Subcontracting Reports for Individual Contracts and Standard Form 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged, women-owned, and service-disabled veteran owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PRO-NET), guides, and other data that identify small, small disadvantaged, women-owned and service-disabled veteran owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged women-owned, or service-disabled veteran owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating

(A) Whether small business concerns were solicited and if not, why not,

(B) Whether small disadvantaged business concerns were solicited and if not, why not,

(C) Whether women-owned small business concerns were solicited and if not, why not,

(D) Whether service-disabled veteran owned small business concerns were solicited and if not, why not, and

(E) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact the following:

(A) Trade associations,

(B) Business development organizations, and

(C) Conferences and trade fairs to locate small, small disadvantaged, women-owned, and service-disabled small business sources.

(v) Records of internal guidance and encouragement provided to buyers through

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(A) Workshops, seminars, training, etc., and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged, women-owned, and service-disabled veteran owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small, small disadvantaged, women-owned, and service-disabled veteran owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged, women-owned, and service-disabled veteran owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged, women-owned, and service-disabled veteran owned small business concerns,.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged, women-owned or service-disabled veteran owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided:

(1) The master plan has been approved,

(2) The offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer, and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the

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Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract titled "Use Of Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

3.6.1.6 LIQUIDATED DAMAGES – SUBCONTRACTING PLAN (FEB 2003)

(a) Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means the lack of a good faith effort to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract titled "Small, Small Disadvantaged, Women-Owned, Veteran-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract titled "Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial product plans; i.e., company- wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract titled "Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan," the Contracting Officer of the

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agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.

(e) The Contractor shall have the right of appeal from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

3.6.1.7 LIMITATIONS ON SUBCONTRACTING. (AUGUST 1997)

By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for:

(a) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the prime contractor.

(b) Supplies (other than procurements from a regular dealer in such supplies). The prime contractor shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(c) General construction. The prime contractor shall perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(d) Construction by special trade contractors. The prime contractor shall perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

Compute small business subcontracting labor cost percentages as follows:

Contractor Subcontractor

Direct Labor \$ _____ \$ _____

Allowable Overhead _____

Subtotal (A) _____ (B) _____

Labor G&A @ _____ % _____

Total Labor Costs (C) _____ (D) _____

To calculate the subcontracting percentage, first add Direct Labor and Allowable

Overhead and enter the figures for the contractor in space (A) and for the subcontractor (if available)* in space (B).

Next, calculate Labor G & A by multiplying the G & A rate by the subtotal figure in space (A). Calculate subcontractor Labor G & A by multiplying the subcontractor's G & A rate by figure (B). Add the Labor G & A to the Subtotal and record that figure in the spaces for Total Labor Costs (C) and (D).

Now, using the formula $(D)/(C) + (D)$, calculate the subcontracting labor cost percentage.

*You need to be comparing as like figures as possible; therefore, if you have a breakdown of the subcontractor's costs, use it in the formulation above. If you do not have a breakdown of the subcontractors' costs, you should use the Total Subcontracting Amount for item (D), though you should still breakdown the contractor's costs.

(End of clause)

3.6.2.2 CONVICT LABOR (FEB 2003)

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755.

(End of clause)

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3.6.2.5 PROHIBITION OF SEGREGATED FACILITIES (FEB 2003)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between sexes.

(b) The contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in the contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

3.6.2.9 EQUAL OPPORTUNITY (FEB 2003)

a) If During any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to,

(i) employment,

(ii) upgrading,

(iii) demotion,

(iv) transfer,

(v) recruitment or recruitment advertising,

(vi) layoff or termination,

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- (vii) rates of pay or other forms of compensation, and
 - (viii) selection for training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the TSA all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
- (8) The Contractor shall permit access to its books, records, and accounts by the TSA or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (11) The Contractor shall take such action with respect to any subcontract or purchase order as the TSA may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

**3.6.2.12 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA
VETERANS (FEB 2003)**

(a) Definitions.

(1) "Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) "Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established 'recall' lists.

(3) "Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

(4) "Suitable employment openings," as used in this clause--(1) Includes, but is not limited to, openings that occur in jobs categorized as—

(i) Production and non-production;

(ii) Plant and office; (iii) Laborers and mechanics;

(iv) Supervisory and non-supervisory;

(v) Technical; and

(vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and (2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special

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disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Employment;
- ii) Upgrading;
- iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (viii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

(1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and non-veterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

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(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when:

- (i) the Government's needs cannot reasonably be supplied,
- (ii) listing would be contrary to national security, or
- (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)

3.6.2.13 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (FEB 2003)

(a) General.

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(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

(1) The Contractor agrees to post employment notices stating--

- (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
- (ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant

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Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

3.6.2.14 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF VIETNAM ERA (FEB 2003)

(a) The contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form titled 'Federal Contractor Veterans' Employment Report VETS-100.'

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant of employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

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3.6.2.16 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 2003)

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

(End of clause)

3.6.2.28 SERVICE CONTRACT ACT OF 1965, AS AMENDED (FEB 2003)

(a) Definitions.

(1) Act, as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

(2) Contractor, as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term Government Prime Contractor.

(3) Service employee, as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

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(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise

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the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished there under to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with subpart D of 29 CFR Part 4.

(e) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor Contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing

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as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act-

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

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(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay Periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such

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agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority List. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names, of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) Rulings and Interpretations. Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) Contractor's Certification.

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by P. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof),

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applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations 29 CFR part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision-

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) Disputes Concerning Labor Standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the "Disputes" clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

**3.6.2.30 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE
ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS (FEB 2003))**

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- (a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.
- (b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.
- (c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.
- (d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:
- (1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
 - (2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or
 - (3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.
- (e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.
- (f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.
- (g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

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3.6.3.7 WASTE REDUCTION PROGRAM (FEB 2003)

(a) Definition. "Waste reduction," as used in this clause, means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 12873, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. Any such program shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.) and implementing regulations.

(End of clause)

3.6.3-11 TOXIC CHEMICAL RELEASE REPORTING (FEBRUARY 2003)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) <http://www.epa.gov/tri/report> as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items shall—

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(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision entitled Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

3.6.3.16 DRUG FREE WORKPLACE (JAN 2004)

(a) Definitions. As used in this clause,

1. "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

2. "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

3. "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

4. "Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

5. "Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

6. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

7. "Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual shall within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration), or as soon as possible for contracts of less than 30 calendar days performance duration:

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about:

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

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(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will:

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this clause may render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

3.6.4.2 BUY AMERICAN ACT – SUPPLIES (FEB 2003)

(a) The Buy American Act (41 U.S.C. 10) and Executive Order No. 10582, dated December 17, 1954, as amended, provide that the Government give preference to domestic end products.

(b) Definitions:

(1) "Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

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(2) "Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (c)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(3) "End products," as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(4) "Foreign offer," as used in this clause, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty free entry certificate is issued).

(c) The Contractor shall deliver only domestic end products, except those--

(1) For use outside the United States;

(2) That the TSA determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the TSA determines that domestic preference would be inconsistent with the public interest; or

(4) For which the TSA determines the cost to be unreasonable.

(i) Unless the TSA determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer, inclusive of duty, by:

(A) More than 6 percent, if a domestic offer is from a large business that is not a labor surplus area concern; or

(B) More than 12 percent, if a domestic offer is from a small business concern or any labor surplus area concern.

(ii) The evaluation in subparagraph (i) above shall be applied on an item by item basis or to any group of items on which award may be made, as specifically provided by the screening information request.

(iii) If an award of more than \$250,000 would be made to a domestic concern if the 12 percent factor were applied, but not if the 6 percent factor were applied, the TSA will decide whether award to the domestic concern would involve unreasonable cost.

(End of clause)

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3.6.4.8 BUY AMERICAN ACT – NAFTA IMPLEMENTATION ACT – BALANCE OF PAYMENTS PROGRAM (FEB 2003)

(a) Definitions. As used in this clause--

(1) "Components" means those articles, materials, and supplies incorporated directly into the end products. Domestic end product means (i) an unmanufactured end product mined or produced in the United States, or (ii) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government, to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(2) "End products" means those articles, materials, and supplies to be acquired under this contract for public use.

(3) "Foreign end product" means an end product other than a domestic end product.

(4) "North American Free Trade Agreement (NAFTA) country" means Canada or Mexico.

(5) "NAFTA country end product" means an article that (i) is wholly the growth, product, or manufacture of a NAFTA country, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(b) This clause implements the Buy American Act (41 U.S.C. 10), the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as NAFTA country end products.

(c) The Contracting Officer has determined that the NAFTA applies to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless in its offer, it specifies delivery of foreign end products in the provision "Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate." An offer based on supplying a NAFTA country end product requires the Contractor to supply a NAFTA country end product or, at the Contractor's option, a domestic end product.

(d) The restrictions of the Buy American Act or the Balance of Payments Program will be applied to foreign offers, except as follows:

(1) Canadian end products under supply contracts with an estimated value above \$25,000 and Mexican end products under supply contracts with an estimated value above \$50,000.

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(2) NAFTA country construction materials under construction contracts with an estimated acquisition value of \$6,500,000 or more.

(End of clause)

3.6.4.10 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2003)

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire for use in the performance of this contract--

(1) Any supplies or services originating from sources within the communist areas of North Korea, Vietnam, Cambodia, or Cuba;

(2) Any supplies that are or were located in or transported from or through North Korea, Vietnam, Cambodia, or Cuba; or

(3) Arms, ammunition, or military vehicles produced in South Africa, or manufacturing data for such articles.

(b) The Contractor shall not acquire for use in the performance of this contract supplies or services originating from sources within Iraq, any supplies that are or were located in or transported from or through Iraq, or any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

3.6.4.12 SANCTIONED EUROPEAN UNION COUNTRY END PRODUCTS (FEB 2003)

(a) *Definitions.* As used in this clause --

"Sanctioned European Union country end product" means an article that--

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a sanctioned EU member state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

"Sanctioned European Union member state" means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not deliver any sanctioned European Union country end products under this contract.

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(End of clause)

3.6.4.13 SANCTIONED EUROPEAN UNION COUNTRY SERVICES (FEB 2003)

(a) *Definition.* "Sanctioned European Union member state," as used in this clause, means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not perform services under this contract in a sanctioned European Union member state. This prohibition does not apply to subcontracts.

(End of clause)

**3.6.5.1 INDIAN ORGANIZATIONS AND INDIAN OWNED ECONOMIC ENTERPRISE
SUBCONTRACTING (FEB 2003)**

(a) This clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause titled, "Small Business and Small Disadvantaged Business Subcontracting Plan."

(b) Definitions.

(1) As used in this clause, "Indian organization" means the governing body of any Indian tribe (as defined by 25 U.S.C. 1452(c)) or entity established or recognized by the governing body for the purposes of 25 U.S.C., chapter 17.

(2) "Indian-owned economic enterprise" means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

(c) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises the (25 U.S.C. 1544) maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contractor may rely on the written representation of the Indian organization or Indian-owned economic enterprise.

(2) If the cost of subcontracting with an Indian organization or Indian-owned economic enterprise exceeds the cost of acquiring the supplies or services from a non-Indian source, the Contractor may request an adjustment to the following: (i) The estimated cost of a cost-type contract; (ii) The target cost of a cost-plus-incentive-fee prime contract; (iii) The target cost and ceiling price of a fixed-price incentive prime contract; or (iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be the lesser of--

(i) The difference between the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or enterprise and the corresponding estimated cost, target cost or firm-fixed-price

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which would have been included in a subcontract with the otherwise low, non-Indian offeror; or

(ii) Five percent of the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(d) The Contracting Officer shall decide the amount of the adjustment and modify the contract accordingly. The Contracting Officer's decision is final and not subject to the "Contract Disputes" clause of this contract.

(End of clause)

3.7-1 PRIVACY ACT NOTIFICATION (February 2003)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations (49 CFR Part 10). Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

3.7-2 PRIVACY ACT (February 2003)

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations (49 CFR Part 10) issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies--

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For

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purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) 'Operation of a system of records,' as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) 'Record,' as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) 'System of records on individuals,' as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

**3.8.2.10 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION
(FEB 2003)**

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)

3.8.2.11 CONTINUITY OF SERVICES (FEB 2003)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to:

(1) furnish phase-in training and

(2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice:

(1) furnish phase-in, phase-out services for up to 90 days after this contract expires, and

(2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

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(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a prorata portion of the fee (profit) under this contract.

(End of clause)

3.8.4.5 GOVERNMENT SUPPLY SOURCES (FEB 2003)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be Government-furnished property, as distinguished from Government property. The provisions of the "Government Property-Basic Clause", except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)

3.9.1-1 CONTRACT DISPUTES (FEBRUARY 2003)

All contract disputes arising under or related to this contract shall be resolved through the Transportation Security Administration (TSA) dispute resolution system at the FAA Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A contractor may seek review of a final TSA decision only after its administrative remedies have been exhausted.

(b) The filing of a contract dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A contract dispute is considered filed on the date it is received by the ODRA.

(c) Contract disputes are to be in writing and shall contain:

- (1) The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;
- (2) The contract number and the name of the Contracting Officer;
- (3) A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;
- (4) All information establishing that the contract dispute was timely filed;

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(5) A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and cancelled checks) attached, broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(d) Contract disputes shall be filed at the following address:

Office of Dispute Resolution, AGC-70
Federal Aviation Administration
800 Independence Avenue S.W. Room 323
Washington, DC 20591
Telephone: (202) 267-3290, Facsimile: (202) 267-3720

(2) other address as specified in 14 CFR Part 17.

(e) A contract dispute against the TSA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the TSA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of TSA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. TSA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any TSA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the TSA knew or should have known of the presence of the fraud or latent defect.

(f) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.

(g) After filing the contract dispute, the contractor should seek informal resolution with the Contracting Officer.

(h) The TSA requires continued performance with respect to contract disputes arising under this contract, in accordance with the provisions of the contract, pending a final TSA decision.

(i) The TSA will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the contract dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on contract disputes shall be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the contract dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made.

(j) Additional information and guidance about the ODRA dispute resolution process for contract disputes can be found on the ODRA Website at <http://www.faa.gov>.

(End of clause)

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3.9.1-2 PROTEST AFTER AWARD (FEBRUARY 2003)

(a) Upon receipt of a notice that a protest has been filed with the FAA Office of Dispute Resolution for Acquisition (ODRA), or a determination that a protest is likely, the (Undersecretary or his designee may instruct the Contracting Officer) to direct the Contractor to stop performance of the work called for by this contract. The order to the Contractor shall be in writing, and shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision or other resolution of the protest, the Contracting Officer shall either--

- (1) Cancel the stop-work order; or
- (2) For other than cost-reimbursement contracts, terminate the work covered by the order as provided in the "Default" or the "Termination for Convenience of the Government" clause(s) of this contract; or
- (3) For cost-reimbursement contracts, terminate the work covered by the order as provided in the "Termination" clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after the final resolution of the protest, the Contractor shall resume work. The Contracting Officer shall make for other than cost-reimbursement contracts, an equitable adjustment in the delivery schedule or contract price, or both; and for cost-reimbursement contracts, an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected; and the contract shall be modified, in writing, accordingly, if--

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(End of clause)

3.10.1.1 NOTICE OF INTENT TO DISALLOW COSTS (FEB 2003)

(a) Notwithstanding any other clause of this contract--

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(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under subparagraph (1) above, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this "Notice of Intent to Disallow Costs" clause shall not affect the Government's rights to take exception to incurred costs.

(End of clause)

3.10.1.3 PENALTIES FOR UNALLOWABLE COSTS (FEB 2003)

(a) Definition. Proposal, as used in this clause, means either-

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which:

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price;

(2) The final statement of costs incurred and estimated to be incurred under the "Incentive Price Revision" clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties, as described in paragraph (d) below.

(c) The Contractor shall not include in any proposal any cost which is unallowable, as defined in the TSA Contract Cost Principles.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is unallowable, the Contractor shall be assessed a penalty equal to:

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed:

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

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(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause, if disputed, may be the basis of a claim under the "Contract Disputes" clause.

(g) The Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause if the contractor demonstrates that the error was unintentional, or the proposal is withdrawn prior to commencement of an audit.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

3.10.1.7 BANKRUPTCY (FEB 2003)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

3.10.1.12 CHANGES – FIXED PRICE (FEB 2003)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

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(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the "Disputes" clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

3.10.1.12 CHANGES - FIXED PRICE, ALT II (FEB 2003)

If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(End of clause)

3.10.1.13 CHANGES – COST REIMBURSEMENT (FEB 2003)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the:

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- (1) estimated cost, delivery or completion schedule, or both;
- (2) amount of any fixed fee; and
- (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the "Limitation of Cost or Limitation of Funds" clause of this contract.

(End of clause)

3.10.1.13 CHANGES – COST REIMBURSEMENT, ALT II (FEB 2003)

If the requirement is for services and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

(End of clause)

3.10.1-14 CHANGES - TIME AND MATERIALS OR LABOR HOURS (FEBRUARY 2003)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications.
- (2) Method of shipment or packing.

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(3) Place of delivery.

(4) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the:

(1) ceiling price,

(2) hourly rates,

(3) delivery schedule, and

(4) other affected terms, and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the "Disputes" clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

3.10.2-1 SUBCONTRACTS - FIXED-PRICE CONTRACTS (FEBRUARY 2003)

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) Subcontract, as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract:

(1) Is proposed to exceed \$100,000; or

(2) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed \$100,000.

(c) The advance notification required by paragraph (b) above shall include-

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting-

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant considerations controlling establishment of initial or revised prices;

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- (iii) The reason cost or pricing data were or were not required;
- (iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
- (v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;
- (vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and
- (vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

- (d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.
- (e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts identified below:
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination:
 - (1) of the acceptability of any subcontract terms or conditions,
 - (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or
 - (3) to relieve the Contractor of any responsibility for performing this contract.
- (g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.
- (h) The Government reserves the right to review the Contractor's purchasing system.

(End of clause)

**3.10.2-3 SUBCONTRACTS - TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS
(FEBRUARY 2003)**

- (a) Subcontract, as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for furnishing any of the work called for in this contract, except for purchase of raw material or commercial stock items.
- (b) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.
- (c) The Government reserves the right to review the Contractor's purchasing system.
- (d) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination:
 - (1) of the acceptability of any subcontract terms or conditions,
 - (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or
 - (3) to relieve the Contractor of any responsibility for performing this contract.

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(End of clause)

3.10.2.5 COMPETITION IN SUBCONTRACTING (FEB 2003)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(End of clause)

**3.10.6.1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT – FIXED PRICE
(AUG 2002)**

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to the Government:
 - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and
 - (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
- (7) Complete performance of the work not terminated.

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(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor:

(i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1-year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by:

(1) the amount of payments previously made and

(2) the contract price of work not terminated.

The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

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(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of--

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of setting and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(h) The cost principles and procedures, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor may file a claim with the FAA Office of Dispute Resolution for Acquisition based on any determination made by the Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor:

(1) the amount determined by the Contracting Officer if there is no right to file a claim or if no claim has been filed, or

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(2) the amount finally determined allowable by the FAA Office of Dispute Resolution for Acquisition.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

3.10.6.3 TERMINATION – COST REIMBURSEMENT (FEB 2003)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if--

(1) The Contracting Officer determines that a termination is in the Government's interest; or

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(2) The Contractor defaults in performing this contract. 'Default' includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the "Excusable Delays" clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government:

(i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated,

(ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government, and

(iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

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(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor:

(i) is not required to extend credit to any purchaser and

(ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) above, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (1) above.

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(3) The reasonable costs of settlement of the work terminated, including--

- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

If the termination is for default no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract determined as follows:

- (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
- (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under subparagraph (g)(4) above.

(h) The cost principles and procedures, in effect on the date of this contract shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor may file a claim with the FAA Office of Dispute Resolution for Acquisition based on any determination made by the Contracting Officer under paragraph (e) or (g) above or paragraph (k) below, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is basis for a claim. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g) or (k), the Government shall pay the Contractor:

- (1) the amount determined by the Contracting Officer if there is no right to file a claim or if no claim has been filed, or
- (2) the amount finally determined allowable by the FAA Office of Dispute Resolution for Acquisition.

(j) In arriving at the amount due the Contractor under this clause, there shall be deducted--

- (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

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(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(k) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) The provisions of this clause relating to fee are Inapplicable if this contract does not include a fee.

(End of clause)

3.10.6-3 TERMINATION - COST-REIMBURSEMENT - ALTERNATE IV (FEBRUARY 2003)

Time and Material and Labor Hour Contracts.

If the contract is a time-and-material or labor-hour contract, the contracting officer may use Alternate IV, which substitutes the following paragraphs (g) and (k) for paragraphs (g) and (k) of the basic clause:

(g) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include--

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

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(iv) If not included in (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of contract; and

(v) The reasonable costs of settlement of the work terminated, including-

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under (1) above but omit-

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(k) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of determination, unless extended in writing by the Contracting Officer.

(End of Clause)

3.10.6.4 DEFAULT – FIXED PRICE SUPPLY AND SERVICE (FEB 2003)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) Prior to terminating a contract for default, the Government will issue a show cause notice permitting the Contractor to present any defenses it may have to the default termination.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the

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Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any:

- (1) completed supplies, and
- (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as 'manufacturing materials' in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract.

Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the "Contract Disputes" clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

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(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

3.10.6.7 EXCUSABLE DELAYS (FEB 2003)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. 'Default' includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless--

- (1) The subcontracted supplies or services were obtainable from other sources;
- (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
- (3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

3.13-3 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (FEBRUARY 2003)

In accordance with Executive Order 12873, dated October 20, 1993, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20% post-consumer material. If the contractor can only print/copy double-sided or use recycled paper, the contractor should accomplish whichever one the contractor has the ability to achieve.

(End of clause)

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3.13-10 CONTRACTOR ATTENDANCE AT TSA SPONSORED TRAINING (JANUARY 2003)

This clause applies to TSA support contractors who wish to attend TSA-sponsored training.

(a) If TSA is providing training in a unique area (such as training for tasks required to be performed at TSA exclusively, e.g. the AMS), support contractors may be allowed to attend on a space-available basis. The training hours may be billed as direct hours to the contract. However, TSA will not pay direct hourly charges associated with the number of hours spent in training unless specifically authorized in the provisions of the contract.

(b) The Contracting Officer is the only person with the authority to approve TSA training for a contractor, since it involves the expenditure of government funds.

(c) The support contractor must provide the Contracting Officer's signed authorization to the Course Manager on or before the first day of the class. Original signed authorizations will be retained in the contract file.

(End of Clause)

END OF SECTION

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SECTION K – REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS

| CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|------|------|----------------------------|----------|--|
| ✓ | ✓ | 3.2.5.7 | JUN 1999 | DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS |

**3.2.5-7 DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL
TRANSACTIONS (FEBRUARY 2003)**

(a) Definitions.

- (1) "The Act," as used in this clause, means section 1352, title 31, United States Code.
- (2) "Agency," as used in this clause, means executive agency, within the meaning of 5 U.S.C. 101, 102, and 104(I), and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101..
- (3) "Covered Federal action," as used in this clause, means any of the following Federal actions:
 - (i) The awarding of any Federal contract.
 - (ii) The making of any Federal grant.
 - (iii) The making of any Federal loan.
 - (iv) The entering into of any cooperative agreement.
 - (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (4) "Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.
- (5) "Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
- (6) "Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
- (7) "Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:
 - (i) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
 - (ii) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
 - (iii) A special Government employee, as defined in section 202, title 18, United States Code.
 - (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.
- (8) "Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (9) "Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

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(10) "Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(11) "Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(12) "Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(13) "State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the RFIs/RFPs, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this clause in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall disclose accordingly.

(4) This certification and disclosure is a prerequisite for making or entering into this contract imposed by the Act. Any person who makes a prohibited expenditure or fails to file or amend a disclosure form, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) Agency and legislative liaison by own employees.

(i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

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- (B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (iv) The following agency and legislative liaison activities are permitted where they are prior to the RFI/RFP of any covered Federal action:
 - (A) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of a law authorizing such actions;
 - (v) Only those services expressly authorized by subdivision (c)(1)(i) of this clause are permitted under this clause.
- (2) Professional and technical services.
- (i) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of:
 - (A) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any submittal/offer or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
 - (ii) For purposes of subdivision (c)(2)(i) of this clause, 'professional and technical services' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a submittal/offer by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's submittal/offer, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a submittal/offer are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
 - (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

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(iv) Only those services expressly authorized by subdivisions (c)(2)(i) and (ii) of this clause are permitted under this clause.

(v) The reporting requirements herein shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(d) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (e)(1) of this clause. An event that materially affects the accuracy of the information reported includes:

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the certification, and if required, a disclosure form by any person who requests or receives any subcontractor exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor.

(e) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(f) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or fails to file or amend the disclosure form to be filed or amended by paragraph (b) shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representations made by their subcontractors in the certification and in the disclosure form.

(g) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

END OF SECTION

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SECTION M – EVALUATION FACTORS FOR AWARD

| CPAF | FPAF | TSAAMS CLAUSE NUMBER | DATE | TITLE |
|-------------|-------------|-------------------------------------|-------------|---|
| ✓ | ✓ | 3.2.4.30 | APR 1996 | EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD |
| ✓ | ✓ | 3.2.4.31 | APR 1996 | EVALUATION OF OPTIONS |

3.2.4-30 EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (FEBRUARY 2003)

Except when it is determined not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of Clause)

3.2.4-31 EVALUATION OF OPTIONS (FEBRUARY 2003)

Except when it is determined not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s). (End of provision)

(End of Clause)

END OF SECTION